

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/06/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000277

FILED: _____

STATE OF ARIZONA

CARRIE M COLE

v.

GERALD L KAISER

M CHRISTOPHER PETERSON

FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. 1457414

Charge: 1. RESISTING ARREST

DOB: 01/23/50

DOC: 04/29/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since oral argument on April 8, 2002. This decision is made within 30 days as

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required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record from the Scottsdale City Court, and the Memoranda and oral argument of counsel.

Appellant, Gerald Kaiser, was charged with violating Scottsdale City Ordinance Section 19-13, Failure to Obey a Police Officer, a class 1 misdemeanor offense. After a bench trial Appellant was found guilty, and has filed a timely Notice of Appeal in this case. The only issues raised by Appellant on appeal concern the constitutionality of Scottsdale City Ordinance 19-13.

1. Standard of Review

Appellant raises a number of issues of constitutional dimension and statutory construction. In matters of statutory interpretation, the standard of review is *de novo*.¹ An appellate court does not reweigh the evidence.² Instead, the evidence is reviewed in a light most favorable to affirming the lower court's ruling.³ Appellate courts must also review the constitutionality of a statute *de novo*.⁴

2. Scottsdale's Authority to Enact Ordinance 19-13.

Appellant argues that the City of Scottsdale is without the authority to enact a City Ordinance such as Section 19-13. That Ordinance provides as follows:

No person shall refuse to obey a peace officer engaged in the discharge of his duty, or any other person authorized to aid in quelling

¹ *In re: Kyle M.*, 200 Ariz. 447, 448, 27 P.3d 804, 805 (App. 2001). See also, *State v. Jensen*, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

² *Id.*

³ *Id.*

⁴ *McGovern v. McGovern*, 201 Ariz. 172, 33 P.3d 506 (App. 2001); *Ramirez v. Health Partners of Southern Arizona*, 193 Ariz. 325, 972 P.2d 658 (App. 1998).

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any riot, rout or affray.

It is without dispute that the City of Scottsdale is a charter city as authorized by Article XIII, Section 2 of the Arizona Constitution.⁵ Further, the Scottsdale City Council is authorized by the Scottsdale City Charter in Article 13, Section 5 to enact ordinances which protect and safeguard "the rights, interests, safety, morality, and welfare of the city and its inhabitants."

The City Ordinance Section 19-13 which criminalizes conduct of refusing to obey a police officer appears to be a reasonable exercise of the Scottsdale City Council's police power as guaranteed by its charter and the Arizona Constitution. Further, this Court finds that the exercise of that power is not inconsistent with other provisions in the Arizona Constitution or state statutes. This Court must reject Appellant's contention that the City of Scottsdale lacked authority to enact Section 19-13.

3. Vagueness of Ordinance.

There is a strong presumption in Arizona that questioned statutes and ordinances are presumed to be constitutional, and the party asserting its unconstitutionality has a burden of clearly demonstrating the unconstitutionality.⁵ Whenever possible, a review court should construe an ordinance so as to avoid rendering it unconstitutional and resolve any doubts in favor of constitutionality.⁶ A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited, or if it is drafted in such a manner that permits arbitrary and

⁵ *Hamilton v. Mesa*, 185 Ariz. 420, 916 P.2d 1136 (App. 1995).

⁵ *State v. Lefevre*, 193 Ariz. 385, 389, 972 P.2d 1021, 1025 (App. 1998);
Larsen v. Nissan Motor Corporation in the United States, 194 Ariz. 142, 978 P.2d 119 (App. 1998).

⁶ *Id.*

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discriminatory enforcement.⁷ A statute or ordinance may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.⁸ Due process does not require that a statute or ordinance be drafted with absolute precision.⁹ Whenever the language of a legislative enactment is unclear, the courts must strive to give it a sensible construction and, if possible, uphold the constitutionality of that provision.¹⁰

The specific language used within the Scottsdale City Ordinance make it unlikely that an innocent person would engage in the conduct prohibited by the ordinance inadvertently. The specific language clearly gives persons of average intelligence reasonable notice of behavior which is prohibited: failure to obey a police officer, after a specific instruction, direction or order is given by the officer. Additionally, it does not appear that the ordinance was drafted in such a manner that would permit an arbitrary or discriminatory enforcement of the ordinance.

This Court finds that Scottsdale City Code Section 19-13 is not vague.

4. Overbreadth of Ordinance

Appellant claims that the Scottsdale City Ordinance is unconstitutional because it is unconstitutionally overbroad. An overbroad statute or ordinance is a law that criminalizes

⁷ *State v. Lefevre*, supra; *State v. Steiger*, 162 Ariz. 138, 781 P.2d 616 (App. 1989).

⁸ *Recreational Developments of Phoenix, Incorporated v. City of Phoenix*, 83 F.Supp.2d 1072, 1087 (D.Ariz. 1999), citing *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct 1849, 144 L.Ed.2d 67 (1999).

⁹ *State v. Lefevre*, supra; *State v. Takacs*, 169 Ariz. 392, 819 P.2d 978 (App. 1991), citing *Fuenning v. Superior Court*, 139 Ariz. 590, 680 P.2d 121 (1983).

¹⁰ *State v. Fuenning*, supra; see Maricopa County Juvenile Action No. JT9065297, 181 Ariz. 69, 887 P.2d 599 (App. 1994), citing *State v. Wagstaff*, 164 Ariz. 485, 794 P.2d 118 (1990).

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conduct which is lawful and cannot be constitutionally made unlawful.¹² As with his vagueness claim, Appellant claims that the ordinance is overbroad because it can apply to conduct entitled to protection by the First Amendment to the United States Constitution. However, a person to whom a statute or ordinance may constitutionally be applied, does not have standing to challenge that statute or ordinance simply because it could be applied unconstitutionally in other hypothetical cases.¹³ The only exception to this standing requirement is where a law "substantially abridges the First Amendment rights of other parties not before the court."¹⁴

Appellant's arguments that his passive "failure to obey" the officer could criminalize lawful conduct must fail for the reason Appellant did more than simply ignore the officer. In its findings of fact the trial court found that Appellant refused to obey the officer's order:

The Defendant is found guilty of violation # 2, Refusal to obey a police officer for the reason that the Defendant was ordered by uniformed police officer, D. Taylor, on several occasions to return to the vehicle that the Defendant's wife had been driving but not withstanding the order, the Defendant exited the vehicle two (2) more times before he was finally arrested for disobeying that order.¹⁵

Appellant's refusal to obey the police officer falls squarely within the conduct proscribed by the Scottsdale City Code in Section 19-13. Appellant, therefore, lacks standing to challenge that ordinance as overbroad because it is not overbroad as applied to the Appellant and no First Amendment Rights of other persons not before this Court are affected by

¹² State v. Watson, 198 Ariz. 48, 6 P.3d 752 (App. 2000).

¹³ State v. Musser, 194 Ariz. 31, 977 P.2d 131 (1999).

¹⁴ Id., 194 Ariz. at 32, 977 P.2d at 132.

¹⁵ Minute Order after trial, record on appeal from the Scottsdale City Court.

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the application of the Scottsdale City Ordinance to Appellant. For this reason, this Court rejects Appellant's contentions that the ordinance is overbroad.

5. Conclusion

For all of reasons explained in this Court's opinion, this Court finds Scottsdale City Code Section 19-13 to be constitutionally sound as passed by the Scottsdale City Council and as applied by the Scottsdale City Court to Appellant in this case.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this case back to the Scottsdale City Court for all further and future proceedings in this case.